

IN THE UNITED STATES DISTRICTS COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

DEIDRE AGAN,) Cause 1:19-cv-00083-SPW-TJC
)
Plaintiff,)
) VIDEO DEPOSITION
vs.)
)
BNSF RAILWAY CO., a) OF
Delaware corporation,)
)
Defendant.) DEIDRE AGAN

2722 Third Avenue North, Suite 400
Billings, Montana
May 27, 2020

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Also present: Joel Hageman
Videographer

EXHIBIT

10

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<div>Page 3</div> <div> <div>1</div> <div>EXHIBITS</div> <div>2</div> <div>3 Number Description Page</div> <div>4 1 BNSF Crew Management-Tape History 60</div> <div>5 2 BNSF Return to Work Med. Questionnaire 85</div> <div>6 3 7/23/19 Dr. Ackerman visit 90</div> <div>7 4 12/16/08 Miles City Progress Note 96</div> <div>8 5 1/30/09 Miles City Progress 98</div> <div>9 6 2/10/09 Holy Rosary Screening Form 102</div> <div>10 7 3/4/09 Miles City Progress Note 106</div> <div>11 8 9/9/19 BNSF Medical Questionnaire 111</div> <div>12 9 10/2/12 Holy Rosary Radiology Report 11</div> <div>13 10 12/1/13 PA Kara Erickson visit, etc. 128</div> <div>14 11 8/8/14 Holy Rosary Healthcare visits 139</div> <div>15 12 12/23/14 Holy Rosary HC visit 141</div> <div>16 13 Holy Rosary Healthcare records 143</div> <div>17 14 On-train documents... 149</div> <div>18 15 8/24/16 Douglas Dalton PA record 169</div> <div>19 16 11/15/2016 Dr. Roccisano record 170</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> </div>	<div>Page 5</div> <div> <div>1 MR. HAGEMAN: Good morning.</div> <div>2 We are going on the record at 9:03 a.m. on</div> <div>3 May 27th, 2020.</div> <div>4 Please note that the microphones are</div> <div>5 sensitive and may pick up whispering and private</div> <div>6 conversations and cellular interference.</div> <div>7 Please turn off all cell phones or place</div> <div>8 them away from the microphones as they can interfere</div> <div>9 with the deposition audio.</div> <div>10 Audio and video recording will continue to</div> <div>11 take place until all parties agree to go off the</div> <div>12 record.</div> <div>13 This is Media Unit 1 of the video recorded</div> <div>14 deposition of Deidre Agan taken by counsel for the</div> <div>15 defense in the matter of Deidre Agan, plaintiff</div> <div>16 versus BNSF Railway Company, defendant filed in the</div> <div>17 United States District Court for the District of</div> <div>18 Montana, Billings Division.</div> <div>19 This deposition is being held at the Yerger</div> <div>20 Law Firm located at 2722 Third Avenue North,</div> <div>21 Billings, Montana.</div> <div>22 My name is Joel Hageman from the firm</div> <div>23 Veritext, and I am the videographer. The court</div> <div>24 reporter is Fran Mock from the firm Veritext.</div> <div>25 I'm not related to any party in this</div> </div>

<p style="text-align: right;">Page 10</p> <p>1 Scott Weber case, did you ever receive a copy of that 2 deposition? 3 A. No. 4 Q. Okay. 5 Was there anything that we discussed during 6 that deposition or any sort of question that I had 7 for you at that deposition, an answer that you gave 8 at that deposition that you left the deposition and 9 said, wait a minute, I wished I answered it 10 differently, or I must have misunderstood something 11 from that deposition? 12 A. No. 13 Q. Okay. 14 What medical issues are you claiming in 15 this lawsuit that were related to the tree incident 16 back in August of 2016? 17 A. I experienced headaches, neck pain, spinal 18 pain, left and right shoulder pain. Numbness in my 19 fingers and in my right leg. Lower back pain. Mm, 20 nightmares, anxiety. 21 I think that's it. 22 Q. Okay. 23 And I know you went into some physical, but 24 then anxiety has sort of some mental health issues. 25 Is there anything on the mental health</p>	<p style="text-align: right;">Page 12</p> <p>1 of the other, you know, the anxiety and whatnot. 2 Q. Did you experience all of those issues 3 within, say, the first three days after the accident, 4 or were there some of them that started more than a 5 week after the accident? 6 A. I don't recall the exact timeline. 7 Q. Okay. 8 Headaches, when did the headaches start 9 after the accident? 10 A. I couldn't -- I can't tell you a date. I 11 -- yeah, I don't recall exactly. 12 Q. Do you still have headaches? 13 A. At times, yes. 14 Q. How often do you have headaches? 15 A. Mm, some days are good days. Other days 16 aren't. Sometimes it's -- there could be weeks where 17 it's every day. There could be weeks where it's not. 18 Q. What medical doctor, if any, has told you 19 that the headaches were related to the accident? 20 A. The doctor doesn't have to tell me. I 21 mean, I'm the one that feels it, so... 22 Q. Has any doctor told you that the headaches 23 that you are feeling now in 2020 were caused by the 24 accident? 25 A. I have not been to the doctor in 2020 for</p>
<p style="text-align: right;">Page 11</p> <p>1 issues that you are claiming is related to this 2 accident other than anxiety and what I'll call the 3 nightmares? 4 I just want to make sure you understood 5 that I was asking that question very broadly. 6 A. I don't really understand what you're 7 asking. 8 Q. Sure. 9 Are you claiming any sort of depression 10 because of this? 11 A. No. 12 Q. Okay. 13 So, giving that as an example, are there 14 any other sort of mental health issues that you are 15 claiming as part of this lawsuit? 16 A. No. 17 Q. Okay. 18 Now, were the list of medical issues that 19 you gave me, were those all issues that you had right 20 after the accident? 21 A. Well, I mean, immediately following the 22 accident, I had so much adrenaline going through me 23 from the fear of what had happened, that I went home 24 that night, and when I woke up the next morning, 25 that's when I started experiencing the pain and a lot</p>	<p style="text-align: right;">Page 13</p> <p>1 headaches. 2 Q. Has any doctor told you that the headaches 3 that you are experiencing currently were caused by 4 this accident? 5 A. I have not seen the doctor recently. 6 Q. When was the last time that you saw a 7 doctor for headaches? 8 A. I don't recall. 9 Q. Are you taking any medication for the 10 headaches? 11 A. Ibuprofen. 12 Q. Is that the over the counter, not the 13 prescribed amount? 14 A. No. 15 Q. Over the counter? 16 A. Yes. 17 Q. Okay. 18 So, roughly how often in a given month 19 would you say you have to take Ibuprofen because of 20 headaches? 21 A. Daily. 22 Q. Okay. 23 Is there a particular reason why you 24 haven't gone to see a doctor to have the doctor treat 25 you for the headaches and asked the doctor if it's</p>

<p style="text-align: right;">Page 14</p> <p>1 related to this accident?</p> <p>2 A. Recently, with the Covid-19 thing, it is</p> <p>3 hard to get in to the doctor.</p> <p>4 Prior to that, I was trying to get back on</p> <p>5 my feet and work and maintain my employment.</p> <p>6 Q. Well, in 2019, were you working full time?</p> <p>7 A. Yes.</p> <p>8 Q. Okay.</p> <p>9 Was there something that was happening that</p> <p>10 was causing you to not be able to work full time for</p> <p>11 BNSF?</p> <p>12 A. No.</p> <p>13 Q. The reason I ask that question is because</p> <p>14 you mentioned you were trying to keep your</p> <p>15 employment.</p> <p>16 When I heard that, I was thinking that</p> <p>17 there was some sort of roadblock or something that</p> <p>18 was causing you to not be able to keep that job,</p> <p>19 whether it be a family situation, a personal</p> <p>20 situation or a medical situation.</p> <p>21 A. No. Just trying to stay within the</p> <p>22 availability guidelines.</p> <p>23 Q. Okay.</p> <p>24 And we said -- but within staying within</p> <p>25 the availability guidelines --</p>	<p style="text-align: right;">Page 16</p> <p>1 A. Mm, personally I think it's from the</p> <p>2 injuries to my neck.</p> <p>3 Q. Okay.</p> <p>4 So, you think your headaches are coming</p> <p>5 from your neck, your cervix -- cervical spine, maybe?</p> <p>6 A. Yeah, somewhere back there.</p> <p>7 Q. And have you ever had headaches that were</p> <p>8 coming from your cervical spine before?</p> <p>9 A. Not that I can recall.</p> <p>10 Q. Now, you mentioned neck pain -- neck and</p> <p>11 spine pain.</p> <p>12 Where specifically are you having the pain</p> <p>13 that you're claiming as part of this lawsuit --</p> <p>14 Let me ask you this, I'm sorry. Strike</p> <p>15 that.</p> <p>16 Do you currently have neck pain?</p> <p>17 A. At this moment?</p> <p>18 Q. Well, yeah, as you sit here today?</p> <p>19 A. Not at this moment, no.</p> <p>20 Q. What about in the last week, have you had</p> <p>21 neck pain?</p> <p>22 A. Yes.</p> <p>23 Q. Do you think it's coming from your cervical</p> <p>24 spine?</p> <p>25 A. I don't know.</p>
<p style="text-align: right;">Page 15</p> <p>1 A. Mm-hmm.</p> <p>2 Q. -- you're able to lay off sick from time to</p> <p>3 time, correct?</p> <p>4 A. That is correct.</p> <p>5 Q. How often are you able to lay off -- lay</p> <p>6 off personal?</p> <p>7 A. Well, I have to be available 75% of the</p> <p>8 time, so...</p> <p>9 Q. Sure.</p> <p>10 If you needed to see a doctor because of a</p> <p>11 medical issue in 2019, did you have the availability</p> <p>12 to lay off from your job to see a doctor?</p> <p>13 A. Yes.</p> <p>14 Q. So, in 2019, is there any particular reason</p> <p>15 why you didn't see a doctor for headaches?</p> <p>16 A. No.</p> <p>17 Q. So, is it fair to say that currently, there</p> <p>18 are no doctors that are treating you for the headache</p> <p>19 symptoms that you're claiming as part of this</p> <p>20 lawsuit?</p> <p>21 A. Yes.</p> <p>22 Q. Did you ever have headaches -- let me ask</p> <p>23 you this:</p> <p>24 What do you think is -- what do you think</p> <p>25 is causing your headaches, you personally?</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. How often do you have neck pain?</p> <p>2 A. Once again, sometimes it's daily, and then</p> <p>3 there's other days where it doesn't hurt.</p> <p>4 Q. Where in your neck does it hurt when you</p> <p>5 have the pain? Can you kind of point to it just so I</p> <p>6 know what part of your neck?</p> <p>7 A. It's like my -- it's all down my spine and</p> <p>8 in through my shoulders.</p> <p>9 Q. Okay.</p> <p>10 And do you have the shoulder pain at the</p> <p>11 same time that you have the neck pain, or do you</p> <p>12 sometimes have just neck pain; no shoulder pain?</p> <p>13 A. Mm, sometimes there's only shoulder pain.</p> <p>14 Other times there's only neck pain.</p> <p>15 Q. Is there one shoulder that hurts more than</p> <p>16 the other?</p> <p>17 A. I can tell you right now, my right shoulder</p> <p>18 hurts more than my left does at this moment.</p> <p>19 Q. Is that typical? If you would look back at</p> <p>20 the last month, does one shoulder hurt more than the</p> <p>21 other?</p> <p>22 A. At times. I mean, yeah.</p> <p>23 I mean -- like I said, at this moment, my</p> <p>24 right shoulder hurts more than my left does.</p> <p>25 I -- I work through it, and I safely</p>

5 (Pages 14 - 17)

<p style="text-align: right;">Page 18</p> <p>1 perform my job, but there is still pain.</p> <p>2 Q. Do you typically have one shoulder that</p> <p>3 hurts more than the other?</p> <p>4 A. Sometimes.</p> <p>5 Q. I'm just saying in general, like if you</p> <p>6 were to add up all the days in the last six months,</p> <p>7 does your right shoulder hurt shoulder hurt more than</p> <p>8 your left? Left more than the other, or are they</p> <p>9 equal?</p> <p>10 A. Probably equal.</p> <p>11 Q. Which medical provider are you seeing for</p> <p>12 neck and shoulder pain currently?</p> <p>13 A. I have not seen a medical provider</p> <p>14 recently.</p> <p>15 Q. In 2019, did you see a medical provider for</p> <p>16 neck and shoulder pain?</p> <p>17 A. No.</p> <p>18 I saw one to establish care.</p> <p>19 Q. And when was that?</p> <p>20 A. I couldn't tell you exactly when.</p> <p>21 Q. Are we talking in 2019?</p> <p>22 A. Yes, I believe.</p> <p>23 Q. Okay.</p> <p>24 Has any doctor in the last year and a half</p> <p>25 told you that the shoulder and neck symptoms that</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. Okay.</p> <p>2 So, if you went to Ortho Montana right now,</p> <p>3 are you saying they're not seeing you? They refuse</p> <p>4 to see you?</p> <p>5 A. I don't know.</p> <p>6 Q. Okay.</p> <p>7 So, do you even know how much it would cost</p> <p>8 if you went to Ortho Montana with your current health</p> <p>9 insurance to have one of the doctors who previously</p> <p>10 treated you follow up with you?</p> <p>11 A. No.</p> <p>12 Q. So, the only reason you didn't go back to</p> <p>13 the doctor in 20 -- so, the only reason you haven't</p> <p>14 gone back to Ortho Montana is because of some unpaid</p> <p>15 bills from 2016?</p> <p>16 A. No health insurance.</p> <p>17 Q. When did you get health insurance back,</p> <p>18 though?</p> <p>19 A. In 2019.</p> <p>20 Q. When were you reinstated for work?</p> <p>21 A. 2019.</p> <p>22 Q. Okay.</p> <p>23 And what month?</p> <p>24 A. February.</p> <p>25 Q. So at the beginning of the year, correct?</p>
<p style="text-align: right;">Page 19</p> <p>1 you're feeling right now are related to the accident?</p> <p>2 MR. WOLFF: Object to the lack of</p> <p>3 foundation.</p> <p>4 Subject to that, you may answer.</p> <p>5 THE WITNESS: Repeat the question.</p> <p>6 BY MR. NICASTRO:</p> <p>7 Q. Sure.</p> <p>8 Has any medical provider in the last year</p> <p>9 and a half told you that the neck and shoulder issues</p> <p>10 that we just discussed were caused the accident?</p> <p>11 A. No.</p> <p>12 Q. And if the answer's the same, that's fine.</p> <p>13 I want to be sure I'm clear on it.</p> <p>14 In 2019, what was the reason for not seeing</p> <p>15 a doctor for a neck or shoulder pain? Is it the same</p> <p>16 reason that you gave for not seeing a doctor for the</p> <p>17 headaches?</p> <p>18 A. Yes.</p> <p>19 Q. Why have you not gone back to Ortho Montana</p> <p>20 to have them look at these symptoms?</p> <p>21 A. Because my medical bills were never paid by</p> <p>22 the company.</p> <p>23 Q. So if you went to Ortho Montana last -- do</p> <p>24 you have insurance currently?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 21</p> <p>1 A. Correct.</p> <p>2 Q. Correct.</p> <p>3 And so you would agree that from February</p> <p>4 of 2019 up until the present day, you've had health</p> <p>5 insurance, so your doctor visit with either one of</p> <p>6 those doctors at Ortho Montana probably would have</p> <p>7 been covered?</p> <p>8 MR. WOLFF: Object to the form. It calls</p> <p>9 for speculation.</p> <p>10 BY MR. NICASTRO:</p> <p>11 Q. Go ahead and answer.</p> <p>12 A. You said it would probably be covered?</p> <p>13 Q. Let me ask you it this way:</p> <p>14 Can you think of any -- can you give me any</p> <p>15 particular reason why you think they may not have</p> <p>16 been covered by your health insurance?</p> <p>17 MR. YERGER: Calls for a legal conclusion.</p> <p>18 Go ahead and answer it.</p> <p>19 THE WITNESS: No.</p> <p>20 BY MR. NICASTRO:</p> <p>21 Q. Have you tried to go see any doctor for any</p> <p>22 of these medical conditions, and a doctor either</p> <p>23 didn't see you because of unpaid medical bills, or</p> <p>24 told you that they wouldn't see you unless you paid</p> <p>25 an amount of money that you thought was unreasonable?</p>

<p style="text-align: right;">Page 26</p> <p>1 A. Not specifically.</p> <p>2 I mean, when I saw Dr. Roccisano, it was</p> <p>3 for my neck and my spine and my back.</p> <p>4 Q. And what do you recall him saying?</p> <p>5 A. He -- about what?</p> <p>6 Q. About your neck, your back and your spine?</p> <p>7 A. He suggested that I get an MRI.</p> <p>8 Q. Did you have the MRI?</p> <p>9 A. No.</p> <p>10 Q. And why not?</p> <p>11 A. Because I had shoulder surgery shortly</p> <p>12 after.</p> <p>13 And after I had right shoulder surgery, I</p> <p>14 developed deep vein thrombosis in my left arm, and I</p> <p>15 couldn't do that.</p> <p>16 I couldn't have an MRI while I was on blood</p> <p>17 thinners, and I was on those for six months.</p> <p>18 Q. Did you have an MRI once you were done with</p> <p>19 the blood thinners?</p> <p>20 A. No.</p> <p>21 Q. And why not?</p> <p>22 A. Didn't have health insurance.</p> <p>23 Q. You've had health insurance in the last</p> <p>24 year and a half. Have you had that MRI that</p> <p>25 Dr. Roccisano recommended?</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. Meaning once a month, or --</p> <p>2 A. Sometime once a month. Sometimes twice a</p> <p>3 week.</p> <p>4 Q. And have you seen any sort of medical</p> <p>5 provider for treatment for that?</p> <p>6 A. No.</p> <p>7 Q. And what are the nightmares?</p> <p>8 A. That I'm being impaled by a tree?</p> <p>9 Q. Anything else, or is it just that one</p> <p>10 nightmare over and over?</p> <p>11 A. Same nightmare over and over.</p> <p>12 Q. Have you discussed those nightmares with</p> <p>13 any doctor?</p> <p>14 A. No.</p> <p>15 Q. Are you -- are you seeing a mental health</p> <p>16 physician?</p> <p>17 A. No.</p> <p>18 Q. How about anxiety? Tell me what --</p> <p>19 describe the anxiety that you are claiming in this</p> <p>20 lawsuit.</p> <p>21 A. It's the fear that there's times that I</p> <p>22 will go to work, and I won't go home to my kids.</p> <p>23 Q. And how often do you feel that anxiety?</p> <p>24 A. Every time I get on a train.</p> <p>25 Q. When did this anxiety start?</p>
<p style="text-align: right;">Page 27</p> <p>1 A. No.</p> <p>2 Q. Why not?</p> <p>3 A. The same reasons that I stated earlier.</p> <p>4 Q. And so going back to what, if anything, did</p> <p>5 Dr. Roccisano say about what was causing your low</p> <p>6 back pain? Even though I know you didn't do the MRI,</p> <p>7 but what, if anything, did he say about what he</p> <p>8 thought might have been causing it, if anything?</p> <p>9 A. He didn't say. He just suggested that I</p> <p>10 get an MRI.</p> <p>11 Q. So, fair to say that Dr. Roccisano did not</p> <p>12 say it was caused by the accident?</p> <p>13 A. (No response.)</p> <p>14 Q. Let me rephrase the question.</p> <p>15 Is it fair to say that no doctor has said</p> <p>16 that your low back pain was caused by the accident?</p> <p>17 A. Yes.</p> <p>18 Q. Okay.</p> <p>19 So the nightmares, was this -- when did the</p> <p>20 nightmares start?</p> <p>21 A. Within days after the collision.</p> <p>22 Q. And you still have them?</p> <p>23 A. From time to time.</p> <p>24 Q. How often?</p> <p>25 A. Monthly.</p>	<p style="text-align: right;">Page 29</p> <p>1 A. Right after I went back to work in 2019.</p> <p>2 Q. And are you seeing any sort of mental</p> <p>3 health provider for the anxiety?</p> <p>4 A. I'm not seeing a mental health provider.</p> <p>5 Q. Has any doctor told you that the anxiety</p> <p>6 was caused by the accident?</p> <p>7 A. No.</p> <p>8 Q. Have you ever had anxiety prior to the</p> <p>9 accident?</p> <p>10 A. Yes.</p> <p>11 Q. How often?</p> <p>12 A. A couple times.</p> <p>13 Q. Anxiety about what? What was it related</p> <p>14 to?</p> <p>15 A. I don't know.</p> <p>16 Q. What sort of situations would create --</p> <p>17 would cause the anxiety for you? Make you be</p> <p>18 anxious, I guess?</p> <p>19 A. It wasn't a specific situation.</p> <p>20 Q. Okay.</p> <p>21 So, give me an example of some of the</p> <p>22 anxiety that you had prior to the accident?</p> <p>23 A. Mm, just nervousness for no apparent</p> <p>24 reason.</p> <p>25 Q. Okay.</p>

<p style="text-align: right;">Page 30</p> <p>1 Were you ever seeing a medical provider for</p> <p>2 your anxiety?</p> <p>3 A. I did see one.</p> <p>4 Q. Were you ever taking medication for your</p> <p>5 anxiety?</p> <p>6 A. I did.</p> <p>7 Q. And what medication was that?</p> <p>8 A. I don't recall.</p> <p>9 Q. Have you taken any medication for the</p> <p>10 anxiety that you're claiming in this lawsuit?</p> <p>11 A. No.</p> <p>12 Q. Why not?</p> <p>13 A. Because I preferred not to take</p> <p>14 psychotropic drugs or things that -- anxiety</p> <p>15 medication is extremely dangerous to be on the</p> <p>16 railroad.</p> <p>17 Q. Okay.</p> <p>18 So you're not taking anxiety medication</p> <p>19 because of your job?</p> <p>20 A. Well, because I don't -- because I don't</p> <p>21 like the effects of feeling slowed down and --</p> <p>22 anxiety makes you extremely sleepy. It -- just the</p> <p>23 side effects are not -- I don't like the side</p> <p>24 effects.</p> <p>25 Q. When did you start working for BNSF?</p>	<p style="text-align: right;">Page 32</p> <p>1 A. I couldn't give you an exact number.</p> <p>2 Q. Have you laid off sick because of reasons</p> <p>3 other than these issues?</p> <p>4 A. Yes.</p> <p>5 Q. What other reasons have you laid off sick?</p> <p>6 Well, let me back up.</p> <p>7 When I use the term "lay off sick" and "lay</p> <p>8 off personal", are they the same thing, or are they</p> <p>9 different when you're working your schedule on the</p> <p>10 railroad?</p> <p>11 Describe that to me. Is there a</p> <p>12 difference?</p> <p>13 A. Well, sick is sick, and personal is</p> <p>14 personal.</p> <p>15 Q. When you lay off sick, do you have to</p> <p>16 provide a doctor's note?</p> <p>17 A. No.</p> <p>18 Q. When you lay off personal, do you have to</p> <p>19 provide a particular reason?</p> <p>20 A. No.</p> <p>21 Q. So, can you lay off sick even though you're</p> <p>22 not sick at BNSF?</p> <p>23 A. I sure it's possible.</p> <p>24 Q. Okay.</p> <p>25 Have you ever done that?</p>
<p style="text-align: right;">Page 31</p> <p>1 A. 2011.</p> <p>2 Q. And from 2011 to the present date have you</p> <p>3 ever taken medication for anxiety?</p> <p>4 A. I don't recall.</p> <p>5 Q. Do you recall whether or not you ever</p> <p>6 took -- you were ever prescribed anxiety medication</p> <p>7 while you were working for BNSF?</p> <p>8 A. I don't recall.</p> <p>9 Q. Who would be the medical provider who would</p> <p>10 have prescribed the anxiety medication while you were</p> <p>11 working for BNSF?</p> <p>12 A. I don't recall.</p> <p>13 Q. Who would be the medical provider who would</p> <p>14 have prescribed the anxiety medication?</p> <p>15 A. I'm not exactly sure who it would have</p> <p>16 been.</p> <p>17 Q. Have you ever missed any work because of</p> <p>18 any of these issues?</p> <p>19 A. Any of --</p> <p>20 Q. Any of these medical issues we've just been</p> <p>21 discussing? Have you ever missed a day of work of</p> <p>22 work because of those medical issues?</p> <p>23 A. I have taken sick days, yes.</p> <p>24 Q. When you have taken -- how many sick days</p> <p>25 have you taken because of this issue?</p>	<p style="text-align: right;">Page 33</p> <p>1 A. Yes.</p> <p>2 Q. All right.</p> <p>3 So, if you just for whatever reason wanted</p> <p>4 a day off from work; you were going to spend some</p> <p>5 time with some friends; the weather's nice, you can</p> <p>6 lay off sick, but you're not actually sick, right?</p> <p>7 A. It is possible to do that, yes.</p> <p>8 Q. Okay.</p> <p>9 And have you done that before?</p> <p>10 A. Once.</p> <p>11 Q. Once, okay.</p> <p>12 Have you ever laid off sick more than once</p> <p>13 for reasons other than being sick?</p> <p>14 A. No.</p> <p>15 Q. Okay.</p> <p>16 Laying off personal, under what</p> <p>17 circumstances would you lay off personal?</p> <p>18 A. Personal reasons.</p> <p>19 Q. Okay.</p> <p>20 And do you have to give a particular reason</p> <p>21 for that?</p> <p>22 A. No.</p> <p>23 Q. And when you lay off sick and lay off</p> <p>24 personal, does the computer give you an option of</p> <p>25 putting in the reason why?</p>

<p style="text-align: right;">Page 42</p> <p>1 we just discussed?</p> <p>2 A. No.</p> <p>3 Q. So, if you did lay off sick for any of</p> <p>4 these particular reasons, and you were working on the</p> <p>5 pool, why would you lay off sick? Just to protect</p> <p>6 not getting called for a train, is that how it works?</p> <p>7 A. I don't understand your question.</p> <p>8 Q. I guess I'm getting at is when you -- you</p> <p>9 said you laid off sick because of some of these</p> <p>10 reasons that we talked about, some of these medical</p> <p>11 reasons since you returned back to work in 2019,</p> <p>12 correct?</p> <p>13 A. Yes, correct.</p> <p>14 Q. And would that have been so you wouldn't</p> <p>15 get called for a particular train, or just because</p> <p>16 you were having the symptoms, and you wanted to lay</p> <p>17 off sick?</p> <p>18 A. Because of the symptoms.</p> <p>19 A train is a train.</p> <p>20 Q. Okay.</p> <p>21 Have you ever told any of your supervisors</p> <p>22 that you were still having these symptoms?</p> <p>23 A. No.</p> <p>24 Q. Have you told anybody with the BNSF Medical</p> <p>25 Department that you're having these symptoms?</p>	<p style="text-align: right;">Page 44</p> <p>1 job task because of the issues that you're claiming</p> <p>2 in this lawsuit?</p> <p>3 A. Yes.</p> <p>4 Q. Have you told any of your supervisors about</p> <p>5 that?</p> <p>6 A. No.</p> <p>7 Q. Why not?</p> <p>8 A. Because if the switch is hard to throw, you</p> <p>9 bad order it.</p> <p>10 Q. Have you ever bad ordered a switch for</p> <p>11 being hard to throw?</p> <p>12 A. Yes.</p> <p>13 Q. But have you ever told any of your</p> <p>14 supervisors that you're having difficulty operating</p> <p>15 switches because of some of these medical issues?</p> <p>16 A. No.</p> <p>17 Q. And why not?</p> <p>18 A. Because go to work, and you keep your mouth</p> <p>19 shut.</p> <p>20 Q. Who is your supervisor?</p> <p>21 A. The Forsyth trainmaster is John Klemm.</p> <p>22 Q. Okay.</p> <p>23 Has John Klemm ever told you that</p> <p>24 conductors and switchmen should go to work and keep</p> <p>25 their mouth shut and not talk to them about any</p>
<p style="text-align: right;">Page 43</p> <p>1 A. No.</p> <p>2 Q. Have you ever told any of your supervisors</p> <p>3 that you missed a day of work because of these</p> <p>4 symptoms?</p> <p>5 A. No.</p> <p>6 Q. Have you ever told anybody from the Medical</p> <p>7 Department that you missed a day because of these</p> <p>8 symptoms?</p> <p>9 A. No.</p> <p>10 Q. Do you work only as a conductor, or do you</p> <p>11 work as like a switchman, brakeman as well?</p> <p>12 A. I work either as a conductor or a brakeman.</p> <p>13 Q. Conductor or brakeman, okay.</p> <p>14 A. Mm-hmm.</p> <p>15 Q. And you understand what the essential job</p> <p>16 functions of that job is?</p> <p>17 A. Yes.</p> <p>18 Q. Do you feel that in the last year and a</p> <p>19 half, you've been able to do all of those functions</p> <p>20 safely?</p> <p>21 A. Yes.</p> <p>22 Q. Do you operate switches as a switchman/</p> <p>23 brakeman?</p> <p>24 A. Yes.</p> <p>25 Q. Have you had any difficulty performing that</p>	<p style="text-align: right;">Page 45</p> <p>1 difficulties, medical difficulties they might be</p> <p>2 having at work?</p> <p>3 A. No.</p> <p>4 Q. Has anybody in the Medical Department told</p> <p>5 you that that's the way that you should be working at</p> <p>6 BNSF?</p> <p>7 A. No.</p> <p>8 Q. So, why is it that you do that?</p> <p>9 A. Because in my experience, it -- things go a</p> <p>10 lot smoother if you just go to work and go home</p> <p>11 and -- leave it at that.</p> <p>12 Q. Okay.</p> <p>13 So it's a personal reason for you?</p> <p>14 A. Yes.</p> <p>15 Q. Is it based on any specific examples that</p> <p>16 you can give me today?</p> <p>17 A. No.</p> <p>18 Q. Can you give me any particular reason as to</p> <p>19 why you would think the Medical Department would not</p> <p>20 want to know that your job tasks are causing you some</p> <p>21 medical problems?</p> <p>22 MR. YERGER: Speculation. Argumentative.</p> <p>23 Go ahead and answer.</p> <p>24 THE WITNESS: Repeat the question.</p> <p>25 //</p>

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1 BY MR. NICASTRO:
2 Q. Sure.
3 Can you give me any reason why you think
4 that the Medical Department wouldn't want to know
5 that you're out there working but having medical
6 problems while performing the essential functions of
7 your job?
8 A. No.
9 Q. Same question, but I'll just put your
10 supervisors as opposed to the Medical Department.
11 Can you think of any particular reason why your
12 trainmasters would not want to know about any medical
13 issues you're having while performing the essential
14 functions of your job?
15 MR. YERGER: Same objections. Go ahead.
16 THE WITNESS: No.
17 BY MR. NICASTRO:
18 Q. Has anyone at BNSF, supervisor or coworker
19 or Medical Department, ever told you that there would
20 be some sort of negative repercussions if you did
21 tell them that you were having medical problems while
22 performing the essential functions of your job?
23 A. No.
24 Q. Have you asked BNSF for any accommodations
25 in your work -- in your job?

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1 A. No.
2 Q. Have any doctors recommended that you ask
3 for any sort of accommodations in your work?
4 A. I -- time frame?
5 Q. The last year and a half since you've come
6 back to work.
7 A. No.
8 Q. Have you been given any sort of medical
9 restrictions or recommendations with respect to your
10 work tasks from any medical professional?
11 A. Time frame?
12 Q. Since coming back to work?
13 A. No.
14 Q. Have you inquired, sought restrictions from
15 doctors, asked any doctors about any restrictions
16 that they would recommend?
17 A. No.
18 Q. Has any doctor recommended in the last year
19 and a half or told you that you're going to have any
20 sort of future medical treatment?
21 A. No.
22 Q. Has any doctor since the accident besides,
23 obviously, the surgery you had on your shoulder --
24 A. Mm-hmm.
25 Q. -- told you that you would more likely than

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1 not have future surgery?
2 A. Yes.
3 Q. And who told you that, and when?
4 A. Dr. Shenton.
5 Q. Okay.
6 What did he say?
7 A. That I should have my left shoulder done as
8 well.
9 Q. Okay.
10 When you say "left shoulder done", what was
11 he recommending?
12 A. (No response.)
13 Q. Like a scope surgery? What was he
14 recommending? What was wrong your left shoulder?
15 A. Well, the pain.
16 Q. Okay.
17 What surgery was he recommending?
18 A. I'm not exactly sure what the surgery would
19 entail.
20 Q. Did he ever tell you what was causing the
21 problems with your left shoulder?
22 A. Mm, no.
23 Q. Did he ever say that the issues that you
24 were having in your right shoulder and that need for
25 surgery was caused by the accident?

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1 A. Yes.
2 Q. Did you have problems with your left
3 shoulder prior to the accident?
4 A. I have, but not for approximately three or
5 four years prior.
6 Q. Has any doctor told you that you will need
7 surgery on your neck?
8 A. No.
9 Q. Has any doctor told you that you would need
10 surgery on your low back?
11 A. No.
12 Q. Has any doctor told you that you might need
13 surgery on your right shoulder again?
14 A. No.
15 Q. So, when was the last time that Dr. Shenton
16 said that you might need surgery on your left
17 shoulder? What year would this have been?
18 A. 2016.
19 Q. Did he give you a timeline? Next six
20 months? Next year? Next decade?
21 A. Well, there again, I was on blood thinners
22 for six months, so I couldn't even get an MRI, or
23 definitely couldn't get cut open.
24 Q. When you discussed surgery with
25 Dr. Shenton, did he give you any indication as to

<p style="text-align: right;">Page 158</p> <p>1 Q. Right.</p> <p>2 But even if the tree is just standing</p> <p>3 straight up and down, have you noticed a tree</p> <p>4 standing straight up and down or next to the track</p> <p>5 that if they fell, they would land on the track in</p> <p>6 the Forsyth Subdivision?</p> <p>7 A. Yes.</p> <p>8 Q. Have you noticed more than one of those</p> <p>9 trees that fit that definition?</p> <p>10 A. Yes.</p> <p>11 Q. Have you noticed roughly what's -- beside</p> <p>12 this one that we know your train hit, besides that</p> <p>13 one, what would you estimate being the height of some</p> <p>14 of those trees; the tallest other tree that you've</p> <p>15 seen on the Forsyth Subdivision next to a track?</p> <p>16 A. Approximately the same height as the one</p> <p>17 that we hit.</p> <p>18 Q. Have you seen trees with the similar</p> <p>19 diameter of, you know, in diameter than the tree that</p> <p>20 you hit along the Forsyth Subdivision next to the</p> <p>21 railroad tracks?</p> <p>22 A. Yes.</p> <p>23 Q. Have you ever reported those to a</p> <p>24 supervisor, Safety Hotline or written a SIRP about</p> <p>25 any of those particular SIRPS?</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. And again, Safety Marathons, I think we</p> <p>2 talked about this in the deposition, but the Safety</p> <p>3 Marathons are just the conversations that occur</p> <p>4 between the conductors, engineers and the Safety</p> <p>5 Coordinator, who is also an engineer or a conductor,</p> <p>6 but not a supervisor, right?</p> <p>7 A. Yes.</p> <p>8 Q. Okay.</p> <p>9 A. And they report back to the supervisor.</p> <p>10 Q. Yeah.</p> <p>11 And it's on them to report back to the</p> <p>12 supervisor?</p> <p>13 A. Yes.</p> <p>14 Q. And if they don't report back to the</p> <p>15 supervisor, then the supervisor doesn't hear what</p> <p>16 happens during the Safety Marathons, fair?</p> <p>17 A. Yes.</p> <p>18 MR. WOLFF: Objection. Compound. Lack of</p> <p>19 foundation and calls for speculation.</p> <p>20 Deidre, I'm going to ask that you pause in</p> <p>21 between his questions and your answers so either Russ</p> <p>22 or I can have an opportunity to make an objection.</p> <p>23 THE WITNESS: Okay.</p> <p>24 BY MR. NICASTRO:</p> <p>25 Q. During Mr. Weber's case, there were some</p>
<p style="text-align: right;">Page 159</p> <p>1 A. No.</p> <p>2 Q. Is this the only tree that you've seen on</p> <p>3 the Forsyth Subdivision that was leaning towards the</p> <p>4 tracks?</p> <p>5 A. Ever?</p> <p>6 Q. Yeah.</p> <p>7 A. No.</p> <p>8 Q. Have you seen other trees leaning towards</p> <p>9 the track on the Forsyth Subdivision that if they</p> <p>10 fell over, they would land on the tracks?</p> <p>11 A. I had.</p> <p>12 Q. Had you ever reported any of those trees?</p> <p>13 A. They were discussed in Safety Marathons.</p> <p>14 Q. And what was the result? Where were those</p> <p>15 trees, and --</p> <p>16 A. There was one by Bowman that's no longer</p> <p>17 there.</p> <p>18 I can't recall where the other one -- where</p> <p>19 another one might have been.</p> <p>20 Q. Okay.</p> <p>21 Did you ever see some of those trees that</p> <p>22 were leaning toward the track still -- stay next to</p> <p>23 the track even though they were addressed during a</p> <p>24 Safety Marathon?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 161</p> <p>1 documents that came up from a 2006 and a 2008 SIRP</p> <p>2 about trees. I know you weren't working for the</p> <p>3 company at the time, but were you aware of those</p> <p>4 SIRPs, I'll just say at the time I took your</p> <p>5 deposition?</p> <p>6 A. No.</p> <p>7 MR. WOLFF: Objection. Lack of foundation.</p> <p>8 It's compound. It calls for speculation.</p> <p>9 BY MR. NICASTRO:</p> <p>10 Q. As you sit here today, did you know that</p> <p>11 there was a 2006 and a 2008 SIRP that mentions trees</p> <p>12 around, say within ten miles of that mile marker</p> <p>13 where this tree was at?</p> <p>14 MR. WOLFF: Object to the vague form and</p> <p>15 lack of foundation.</p> <p>16 THE WITNESS: Say the question one more</p> <p>17 time.</p> <p>18 BY MR. NICASTRO:</p> <p>19 Q. Sure.</p> <p>20 Were you -- are you aware of any older</p> <p>21 SIRPs that predate your employment that had to do</p> <p>22 with trees around Milepost 175 through 180, we'll</p> <p>23 say?</p> <p>24 A. I have not ever pulled the SIRP -- I don't</p> <p>25 even know to pull up a SIRP report.</p>

<p style="text-align: right;">Page 174</p> <p>1 accumulate vacation days that you could use in 2018?</p> <p>2 A. Yes.</p> <p>3 Q. So in 2019, did you also not accumulate --</p> <p>4 not have vacation days because you were not working</p> <p>5 because of the termination?</p> <p>6 A. Yes.</p> <p>7 MR. NICASTRO: All right.</p> <p>8 Nothing further.</p> <p>9 MR. WOLFF: She will waive.</p> <p>10 MR. HAGEMAN: All right.</p> <p>11 We're off the record at 2:00 p.m., and this</p> <p>12 concludes today's testimony given by Deidre Agan.</p> <p>13 The number of total Media Units was 4 and will be</p> <p>14 retained by Veritext.</p> <p>15 (Whereupon, signature waived.)</p> <p>16 (Whereupon, the deposition was concluded at</p> <p>17 2:00 p.m.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	
<p style="text-align: right;">Page 175</p> <p>1 CERTIFICATE</p> <p>2</p> <p>3 STATE OF MONTANA)</p> <p>4) ss.</p> <p>5 County of Yellowstone.)</p> <p>6 I, Frances L. Mock, a free-lance shorthand</p> <p>7 reporter, a Notary Public in and for the State of</p> <p>8 Montana, do hereby certify that previous to the</p> <p>9 commencement of the examination of the said DEIDRE</p> <p>10 AGAN, a witness called for examination by the</p> <p>11 defendant in the said suit in the said U.S. District</p> <p>12 Court, District of Montana, Billings Division, being</p> <p>13 Civil Action No. 1:19-cv-000830-SPW-TJC, she was duly</p> <p>14 sworn by me to testify the truth in relation to the</p> <p>15 matters in controversy now pending and undetermined</p> <p>16 between the said parties so far as she should be</p> <p>17 interrogated concerning the same;</p> <p>18 That this deposition was taken in shorthand</p> <p>19 by me at 2722 Third Avenue North, Suite 400,</p> <p>20 Billings, Montana, on the 27th day of May, 2020,</p> <p>21 commencing at 9:03 a.m., and was reduced to</p> <p>22 typewritten form by me;</p> <p>23 That the foregoing is a true transcript of</p> <p>24 the questions asked, the testimony given and the</p> <p>25 proceedings had;</p> <p>That I am neither attorney nor counsel, nor</p> <p>in any way connected with any attorney or counsel for</p> <p>any of the parties to said action or otherwise</p> <p>interested in its event.</p> <p>IN WITNESS I have hereunto set my hand and</p> <p>affixed my notarial seal this 7th day of June, 2020.</p> <p>My commission expires December 19, 2023.</p> <p style="text-align: center;"><%6686,Signature%></p>	